

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROGACIANO GONZALES-MENDOZA,

Petitioner,

vs.

RICHARD MORGAN,

Respondent.

NO. CV-05-5065-CI

REPORT AND RECOMMENDATION FOR  
ORDER GRANTING RESPONDENT'S MOTION  
TO DISMISS AND DISMISSING PETITION  
FOR WRIT OF HABEAS CORPUS AS MOOT

BEFORE THE COURT is Respondent's Motion to Dismiss Petitioner's Writ of Habeas Corpus Petition as Moot. (Ct. Rec. 40.) Petitioner is represented by Assistant Federal Defender Tracy Staab; Respondent is represented by Assistant Attorney General Gregory Rosen. The parties have not consented to proceed before a magistrate judge.

**BACKGROUND**

Petitioner's writ of habeas corpus Petition was filed June 23, 2005. (Ct. Rec. 1.) Petitioner challenged a determination by the Indeterminate Sentence Review Board ("ISRB"), denying him parole eligibility and increasing his minimum sentence by 60 months. This habeas action was dismissed October 3, 2005, as untimely filed. (Ct. Rec. 11.) On August 27, 2007, the Ninth Circuit Court of Appeals remanded it for reconsideration in light of new case law: *Mendoza v. Carey*, 449 F.3d 1065 (9th Cir. 2006). (Ct. Rec. 27.) On November 5, 2007, the court directed service on Respondent. (Ct. Rec. 32.) On

1 December 5, 2007, the court granted Respondent's motion for extension  
2 of time to file an answer to the Petition based on Ms. Staab's  
3 understanding that Petitioner would be deported to Mexico following  
4 his parole to Immigration and Custom Enforcement (ICE) detainer. (Ct.  
5 Rec. 37.)

6 On January 4, 2008, Petitioner was ordered deported. (Ct. Rec 40  
7 at 7.) The record indicates he was deported to Mexico on January 16,  
8 2008. (Id. at 3, 10-12.) On February 7, 2008, Respondent filed the  
9 instant Motion to Dismiss Petitioner's Petition for Writ of Habeas  
10 Corpus as Moot, and the matter was set for hearing on March 7, 2008,  
11 without oral argument. (Ct. Rec. 40, 42.) Counsel for Respondent  
12 represents that Petitioner's counsel communicated she did not plan to  
13 object or file responsive pleadings to the instant Motion to Dismiss.  
14 (Ct. Rec. 40 at 3.) Petitioner has not filed responsive pleadings.  
15 Accordingly, **IT IS RECOMMENDED** that Respondent's Motion to Dismiss  
16 Petitioner's Petition for Writ of Habeas Corpus (Ct. Rec. 40) be  
17 **GRANTED**, and Petitioner's habeas action be dismissed as moot.

#### 18 **OBJECTIONS**

19 Any party may object to a magistrate judge's proposed findings,  
20 recommendations or report within ten (10) days following service with  
21 a copy thereof. Such party shall file written objections with the  
22 Clerk of the Court and serve objections on all parties, specifically  
23 identifying any the portions to which objection is being made, and the  
24 basis therefor. Any response to the objection shall be filed within  
25 ten (10) days after receipt of the objection. Attention is directed  
26 to Fed. R. Civ. P. 6(e), which adds another three (3) days from the  
27 date of mailing if service is by mail.

1 A district judge will make a de novo determination of those  
2 portions to which objection is made and may accept, reject, or modify  
3 the magistrate judge's determination. The judge need not conduct a  
4 new hearing or hear arguments and may consider the magistrate judge's  
5 record and make an independent determination thereon. The judge may,  
6 but is not required to, accept or consider additional evidence, or may  
7 recommit the matter to the magistrate judge with instructions. *United*  
8 *States v. Howell*, 231 F.3d 615, 621 (9<sup>th</sup> Cir. 2000); 28 U.S.C.  
9 § 636(b)(1)(B) and (C), Fed. R. Civ. P. 73; LMR 4, Local Rules for the  
10 Eastern District of Washington.

11 A magistrate judge's recommendation cannot be appealed to a court  
12 of appeals; only the district judge's order or judgment can be  
13 appealed.

14 The District Court Executive is directed to file this Report and  
15 Recommendation and provide copies to counsel for Petitioner and  
16 Respondent and the referring district judge.

17 DATED March 14, 2008.

18  
19 S/ CYNTHIA IMBROGNO  
20 UNITED STATES MAGISTRATE JUDGE  
21  
22  
23  
24  
25  
26  
27  
28